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Priority Handling**Congressional
Action** *11 AC***SUBJECT:****HAC Van Wagenen - Questions on Guns and Funding for Contras**

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CENTRAL AMERICA

Trouble with the Law

Nicaragua wins a propaganda victory over the U.S. in the World Court

As fighting between the Sandinista government and the U.S.-inspired *contra* guerrillas sputters along Nicaragua's northern border, skirmishes between Washington and Managua continue to rage on broader battlefields: in newspapers, at fund-raising offices, in college classrooms and along the corridors of Congress. Through legal challenges, diplomatic maneuvers and public relations jabs, Nicaragua's Marxist-led government and the Reagan Administration have been fighting for the hearts and minds of the international diplomatic community. In this not-at-all-secret war of words, the U.S. last week suffered an embarrassing setback. The 16 judges of the World Court, in a series of firm decisions delivered from their imposing headquarters in The Hague, acknowledged Nicaragua's right to bring suit against the U.S. for its support of the *contras* and to seek damages for the guerrillas' activities. The case will still have to be argued, but the court's decision to grant the Sandinistas a hearing ended what some U.S. officials considered to be Washington's last real hope of extricating itself from a potentially damaging public relations morass.

The dispute arose when the U.S.-backed rebels claimed responsibility for mining Nicaragua's harbors last February and March (the mining stopped by April). The Sandinistas lost no time in going before the United Nations Security Council in New York City, introducing a resolution that called for the immediate end to the mining of Nicaraguan ports. The U.S. used its Security Council veto to block the resolution. The Nicaraguans then decided to take their complaint to the World Court, the judicial arm of the U.N. and the highest forum for resolving disputes between nations. When the U.S. learned of Nicaragua's intention, it launched an ill-conceived pre-emptive strike: just three days before Nicaragua filed suit, the U.S. asserted that it would not accept the "compulsory jurisdiction" of the court over any Central American matters for the next two years. Last week the court overwhelmingly rejected Washington's argument that it had no jurisdiction.

The rulings involved nothing more than the court's right to decide the U.S.

Nicaraguan dispute; the central issue itself is not likely to be resolved any time soon. The Nicaraguans say that their documentation will be ready in three months. At that point, the U.S. has the right, as in any other lawsuit, to respond. But the procedure is an extremely protracted one. First there must be an exchange of written arguments, and then a series of hear-

only American member of the panel, Reagan-appointed Judge Stephen Schwebel.

Having claimed only months ago that they had "an open-and-shut case," State Department lawyers were understandably disappointed by the ruling. They said, however, that the decision marked a setback of tactics rather than strategy in U.S. policy toward Nicaragua and that they

saw no need to amend that policy. They also reasserted that the court should never have been asked to settle what is essentially a political dispute. Said State Department Spokesman Alan Romberg: "We continue to believe that the court is not the proper forum, either as a matter of law or for helping to achieve a peaceful resolution of the conflict in the region." Privately, however, U.S. officials conceded that instead of challenging the court's jurisdiction, they should simply have refused to contest the case.

For their part, the Sandinistas sounded a note of jubilant righteousness. "Today is a historic day, a day of triumph for the cause of peace, a day of hope for humanity," Foreign Minister Miguel d'Escoto Brockmann said in Managua. "If [the U.S. has] any quarrel with us, any justification for their illegal and murderous activities, let them bring it to court. Why are they afraid?" Said Paul Reichler, an American attorney who helped represent the Sandinistas in The Hague: "The Reagan Administration has to decide whether the U.S. is for or against international law."

The choice is hardly that simple, but the Administration does face an unpleasant dilemma. If the U.S. decides to defend itself against Nicaragua's charges once arguments begin, it stands a good chance of losing the case, and thus having its efforts to end Nicaraguan subversion in Central America condemned as lawless. Even U.S. State Department officials acknowledge that the unfortunate decision to declare the U.S. exempt from the court's jurisdiction was made after profiles of the 15 elected judges and their views were compiled; they led to the conclusion that the U.S. had little hope of victory.

Some Washington officials believe that the U.S. can win the case only by releasing classified intelligence information



Focus of the case: *contras* on Nicaraguan border
Facing a dilemma over whether to ignore the verdict.

ings. The final verdict is not expected before the end of 1985. Moreover, the World Court has no power to enforce its rulings.

But last week's decision was nonetheless a clear rebuke to the U.S., a longtime champion of the rule of law, by a court not widely viewed as partisan. Respected jurists from such U.S. allies as Britain, France, West Germany, Italy and Japan found in favor of Nicaragua. The sole dissenting voice on the crucial issue of Nicaragua's standing in the court came from the

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